

**BEFORE THE DEPARTMENT OF WATER RESOURCES  
OF THE STATE OF IDAHO**

IN THE MATTER OF THE COALITION OF CITIES MITIGATION PLAN FOR MANAGED RECHARGE AND OTHER AQUIFER ENHANCEMENT ACTIVITIES FOR THE DISTRIBUTION OF WATER TO WATER RIGHT NOS. 36-02551, 36-07694 & 36-15501, IN THE NAME OF RANGEN, INC.

CM-MP-2014-004  
CM-MP-2014-007  
CM-DC-2011-004  
CM-DC-2014-004

IN THE MATTER OF THE SECOND MITIGATION PLAN FILED BY THE COALITION OF CITIES FOR THE DISTRIBUTION OF WATER TO WATER RIGHT NOS. 36-02551, 36-07694 & 36-15501, IN THE NAME OF RANGEN, INC.

**ORDER DENYING PETITION FOR RECONSIDERATION AND/OR CLARIFICATION**

IN THE MATTER OF DISTRIBUTION OF WATER TO WATER RIGHT NOS. 36-02551 & 36-07694 (RANGEN, INC.)

IN THE MATTER OF DISTRIBUTION OF WATER TO WATER RIGHT NOS. 36-00134B, 36-00135A, AND 36-15501 (RANGEN, INC.)

**BACKGROUND**

On January 16, 2015, the Director (“Director”) of the Idaho Department of Water Resources (“Department”) issued a *Final Order Conditionally Approving Cities’ Second Mitigation Plan* (“Order”) in CM-MP-2014-007.

On the same day, the Coalition of Cities (“Cities”) filed with Director *Coalition of Cities’ Petition for Reconsideration and/or Clarification of the Final Order Conditionally Approving Cities’ Second Mitigation Plan and Request for Stay* (“Petition for Reconsideration”). The Cities seek clarification on two points. First, the Cities seek clarification of a finding in the order that “the Curren Tunnel ... will accrue little or no benefit from the recharge activities . . .” *Petition for Reconsideration* at 2. Second the Cities ask the Director to immediately recognize mitigation

for recharge, arguing the planned recharge “far exceeds the known benefit to Rangen” and “the benefits of curtailing the Cities’ junior-priority water rights will not immediately accrue to the Curren Tunnel.” *Id.*

### **Little or No Accrual of Benefits from Recharge**

The Cities focus on the phrase “little or no benefit” in Finding of Fact no. 11, and question the basis for the finding that “little or no benefit” will accrue to Rangen as a result of the proposed recharge project. *Petition for Reconsideration* at 2. The finding states the “the Curren Tunnel . . . will accrue little or no benefit from the recharge activities during the approximate one month time period between the beginning of the recharge and March 31, the end of the first year of mitigation.” Reading the entire passage, it is clear that because the planned recharge will not occur until the very end of the year in which mitigation is required to be provided, it will accrue little or no benefit to Rangen in the first year of required mitigation (April 1, 2014 through March 31, 2015) and will not deliver water to Rangen when relief from curtailment is sought. Stated another way, the mitigation water will not be timely delivered to Rangen as the required benefits of recharge will not express themselves at Curren Tunnel during the approximate one month period remaining in the first year of obligation.

### **Immediate Mitigation Recognition**

The Cities seek immediate recognition of mitigation for delayed recharge activities because (1) the Cities’ depletions to Curren Tunnel flows caused by diversions authorized by junior priority ground water rights were “not included in the model run that developed the January 19, 2015 curtailment deadline,” and (2) curtailment will not immediately accrue water to the Curren Tunnel, and (3) when the additional water resulting from recharge fully accrues to the Curren Tunnel, it “will greatly exceed the depletive effect of the Cities’ junior-priority groundwater pumping during that same time period.”

The Cities are correct that the Cities’ depletions to Curren Tunnel were not included in the model run that quantified depletions and mitigation requirements. Inclusion would have increased the mitigation obligation and would have contributed to an earlier curtailment date and a larger mitigation requirement. The Cities cannot argue that because the precision of the curtailment model run did not include their increment of real depletion, they should receive special treatment or should be excluded from curtailment.

The *Final Order Regarding Rangen, Inc.’s Petition for Delivery Call; Curtailing Ground Water Rights Junior to July 13, 1962* (“Curtailment Order”) issued on January 29, 2014 established a “phased-in” mitigation requirement. Each of the first four yearly mitigation values was based on the benefits that would accrue to Rangen from full curtailment. The consequence of failure to mitigate would be full curtailment. Almost one year later, the Cities ask the Director to reset the curtailment clock for just the Cities. Unfortunately, the Cities were required to mitigate for the amount of modeled benefits to Rangen accruing in the first year from April 1, 2014 through March 31, 2015. They cannot now ask for a reset.

Finally, the Cities ask the Director to ignore the depletions caused by continued diversion for some promised or expected greater benefit in the future. Approval of the Cities request would not provide water to Rangen in the time of need.

The Petition for Reconsideration also includes a brief one sentence request for stay. *Petition for Reconsideration* at 3. The Cities also requested a stay in another filing submitted on January 16, 2015, *Coalition of Cities' Request for Hearing on First and Second Mitigation Plans and Request for Stay of Curtailment* ("Request for Hearing"). The request for stay will be addressed in the order responding to the Request for Hearing.

### ORDER

Based upon and consistent with the foregoing, IT IS HEREBY ORDERED that the Cities' Petition for Reconsideration and/or Clarification is **DENIED**.

Dated this 17<sup>th</sup> day of January 2015.

  
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GARY SPACKMAN  
Director

## CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 17<sup>TH</sup> day of January 2015, the above and foregoing document was served on the following by providing a copy of the *Order Denying Petition for Reconsideration and/or Clarification* in the manner selected:

ROBERT E WILLIAMS ( ) U.S. Mail, Postage Prepaid  
WILLIAMS MERSERVY & LOTH SPEICH LLP ( ) Facsimile  
153 EAST MAIN STREET (x) E-mail  
PO BOX 168  
JEROME ID 83338  
[rewilliams@cableone.net](mailto:rewilliams@cableone.net)

CANDICE MCHUGH ( ) U.S. Mail, Postage Prepaid  
CHRIS M BROMLEY ( ) Facsimile  
MCHUGH BROMLEY PLLC (x) E-mail  
380 S 4<sup>TH</sup> STREET STE 103  
BOISE ID 83702  
[cmchugh@mchughbromley.com](mailto:cmchugh@mchughbromley.com)  
[cbromley@mchughbromley.com](mailto:cbromley@mchughbromley.com)

J JUSTIN MAY ( ) U.S. Mail, Postage Prepaid  
MAY BROWNING & MAY PLLC ( ) Facsimile  
1419 W WASHINGTON (x) E-mail  
BOISE ID 83702-5039  
[jmay@maybrowning.com](mailto:jmay@maybrowning.com)

ROBYN BRODY ( ) U.S. Mail, Postage Prepaid  
BRODY LAW OFFICE PLLC ( ) Facsimile  
PO BOX 554 (x) E-mail  
RUPERT ID 83350-0554  
[robynbrody@hotmail.com](mailto:robynbrody@hotmail.com)

FRITZ X HAEMMERLE ( ) U.S. Mail, Postage Prepaid  
HAEMMERLE HAEMMERLE ( ) Facsimile  
PO BOX 1800 (x) E-mail  
HAILEY ID 83333-1800  
[fxh@haemlaw.com](mailto:fxh@haemlaw.com)

RANDALL C BUDGE ( ) U.S. Mail, Postage Prepaid  
THOMAS J BUDGE ( ) Facsimile  
RACINE OLSON NYE BUDGE & BAILEY (x) E-mail  
PO BOX 1391  
POCATELLO ID 83204-1391  
[rcb@racinelaw.net](mailto:rcb@racinelaw.net)  
[tjb@racinelaw.net](mailto:tjb@racinelaw.net)

SARAH KLAHN  
MITRA PEMBERTON  
WHITE & JANKOWSKI  
511 16<sup>TH</sup> STREET STE 500  
DENVER CO 80202  
[sarahk@whitejankowski.com](mailto:sarahk@whitejankowski.com)  
[mitrap@whitejankowski.com](mailto:mitrap@whitejankowski.com)

U.S. Mail, Postage Prepaid  
 Facsimile  
 E-mail

A DEAN TRANMER  
CITY OF POCATELLO  
PO BOX 4169  
POCATELLO ID 83205  
[dtranmer@pocatello.us](mailto:dtranmer@pocatello.us)

U.S. Mail, Postage Prepaid  
 Facsimile  
 E-mail

JERRY R RIGBY  
RIGBY ANDRUS & RIGBY  
25 NORTH SECOND EAST  
REXBURG ID 83440  
[jrigby@rex-law.com](mailto:jrigby@rex-law.com)

U.S. Mail, Postage Prepaid  
 Facsimile  
 E-mail

JOHN K SIMPSON  
TRAVIS L THOMPSON  
PAUL L ARRINGTON  
BARKER ROSHOLT & SIMPSON LLP  
195 RIVER VISTA PL STE 204  
TWIN FALLS ID 83301-3029  
[jks@idahowaters.com](mailto:jks@idahowaters.com)  
[tlt@idahowaters.com](mailto:tlt@idahowaters.com)  
[pla@idahowaters.com](mailto:pla@idahowaters.com)

U.S. Mail, Postage Prepaid  
 Facsimile  
 E-mail

W KENT FLETCHER,  
FLETCHER LAW OFFICE  
PO BOX 248  
BURLEY ID 83318  
[wkf@pmt.org](mailto:wkf@pmt.org)

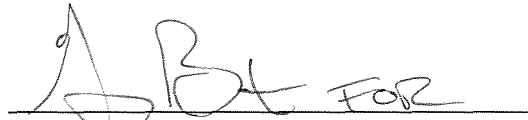
U.S. Mail, Postage Prepaid  
 Facsimile  
 E-mail

C THOMAS ARKOOSH  
ARKOOSH LAW OFFICES  
PO BOX 2900  
BOISE ID 83701  
[Tom.arkoosh@arkoosh.com](mailto:Tom.arkoosh@arkoosh.com)

U.S. Mail, Postage Prepaid  
 Facsimile  
 E-mail

GARY LEMMON  
BLIND CANYON AQUARANCH, INC.  
2757 S 1050 EAST  
HAGERMAN ID 83332  
[glemmon@northrim.net](mailto:glemmon@northrim.net)

U.S. Mail, Postage Prepaid  
 Facsimile  
 E-mail

A handwritten signature in black ink, appearing to read "D. Gibson FOR", written over a horizontal line.

Deborah J. Gibson  
Administrative Assistant to the Director

## **EXPLANATORY INFORMATION TO ACCOMPANY AN ORDER DENYING PETITION FOR RECONSIDERATION**

(To be used in connection with actions when a hearing was **not** held)

(Required by Rule of Procedure 740.02)

The accompanying order is an **Order Denying Petition for Reconsideration** of the "final order" or "amended final order" issued previously in this proceeding by the Idaho Department of Water Resources ("department") pursuant to section 67-5246, Idaho Code.

### **REQUEST FOR HEARING**

Unless the right to a hearing before the director or the water resource board is otherwise provided by statute, any person who is aggrieved by the action of the director, and who has not previously been afforded an opportunity for a hearing on the matter shall be entitled to a hearing before the director to contest the action. The person shall file with the director, within fifteen (15) days after receipt of written notice of the action issued by the director, or receipt of actual notice, a written petition stating the grounds for contesting the action by the director and requesting a hearing. See section 42-1701A(3), Idaho Code. **Note: The request must be received by the Department within this fifteen (15) day period.**

### **APPEAL OF FINAL ORDER TO DISTRICT COURT**

Pursuant to sections 67-5270 and 67-5272, Idaho Code, any party aggrieved by a final order or orders previously issued in a matter before the department may appeal the final order and all previously issued orders in the matter to district court by filing a petition in the district court of the county in which:

- i. A hearing was held,
- ii. The final agency action was taken,
- iii. The party seeking review of the order resides, or
- iv. The real property or personal property that was the subject of the agency action is located.

The appeal must be filed within twenty-eight (28) days of: a) the service date of the final order, b) the service date of an order denying petition for reconsideration, or c) the failure within twenty-one (21) days to grant or deny a petition for reconsideration, whichever is later. See section 67-5273, Idaho Code. The filing of an appeal to district court does not in itself stay the effectiveness or enforcement of the order under appeal.